IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 449 OF 2007
(for Leave to file appeal)
IN
CRIMINAL APPEAL NO. OF 2007
(Against the order of acquittal)

The State of Maharashtra
(Through Shri P.R. Patane, Assistant Comission
of Police, Lashkar Division, Pune) .. Applicant
v/s.
Sachin Kondiba Pathare .. Respondent

Mr. A.S. Shitole, APP for the applicant-State.
Mr S.P. Kadam for the respondent.

CORAM : B.H. MARLAPALLE, J.
DATED : 3RD SEPTEMBER, 2007

P.C.

Heard Mr. A.S. Shitole, the learned APP.

2. This is an application filed under section 378(3) of the Criminal Procedure Code for seeking leave to file appeal against the order of acquittal passed by the learned 11th Ad-hoc Additional Sessions Judge, Pune on 19.10.2006 in Special Case No.10 of 2006. The present respondent-accused came to be acquitted of the offences punishable under section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under sections 323, 504 read with section 34 of I.P.C. as well as under section 7 (1)(d) of the Protection of Civil Rights Act, 1955. Hence this application for

seeking leave to appeal.

3. The trial court on assessment of the evidence, recorded the finding that the complainant belongs to scheduled caste and the respondent-accused and the others belong to Maratha caste. The allegation made by the complainant against the accused was that when he went to demand the money, the accused opened his door and came out with his three friends and started beating the complainant and he uttered the words 'महार पोर मारल्याशिवाय पेपरमध्ये नाव येत नाही आणि नगरसेवक होता येत नाही.'

4. The complainant had claimed that he had constructed the house of the accused upto the cost of Rs.10,00,000/- and, therefore, he went to the accused on 17.2.2006 and demanded the said amount from the accused. The accused promised him to pay the said amount on the next day. Accordingly, on the next day i.e. 18.2.2006, the complainant again went to the accused at the construction site and stopped the construction work. The accused came there and when the complainant demanded the money, the accused asked the complainant to stay at the site for some time and within few minutes, he came out with his two to three other friends and they started beating the complainant and uttered the abovesaid words against the complainant. Exhibit 9 was the written complaint filed by the complainant with the office of the Commissioner of Police, Pune and in the said complaint, nothing was specifically mentioned about the specific allegation about utterance of the words on caste by the accused. It was noticed that the written complaint at Exhibit 9 was filed first in point of time and the complainant' sstatement at Exhibit ` 8 was recorded subsequently and the averments of the allegations made in Exhibit ` 8' suffer from great improvements and/or contradictions in the complaint at Exhibit 9. In the complaint at Exhibit 9, it was not even mentioned that the alleged incident had

taken place in the public view. In addition, it was not stated whether the accused belongs to any other community of Scheduled Castes or Scheduled Tribes. The prosecution had examined PW5 Dr. Bhawan Andhare who had examined the complainant on 18.2.2006. He admitted in his cross-examination that there was no visible fresh injury on the person of the complainant. PW 2 and PW 3 were the other independent eye witnesses, as claimed by the prosecution. Both of them deposed before the trial court in an identical manner. PW3 retracted his statement in Exhibit 23. The record also shows that the aunt of the accused had filed complaint punishable under section 354 I.P.C. against the complainant which was prior in time.

5. Having regard to these circumstance and also the nature of evidence brought on record, the learned Special Judge did not find that prosecution has proved its case beyond reasonable doubt. The reasoning set out by the learned Special Judge in support of his order of acquittal which is sought to be impugned, does not call for any reconsideration at the hands of this court.

6. Consequently, this application fails and leave to appeal is hereby refused.

(B.H. MARLAPALLE, J.)